

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JARVIS J. PORTER,

Plaintiff,

Case # 16-CV-6747-FPG

v.

ORDER DISMISSING CASE

T.J. McDONNELL, et al.,

Defendants.

BACKGROUND

On November 17, 2016, *pro se* Plaintiff Jarvis J. Porter brought this 42 U.S.C. § 1983 case against Defendants. ECF No. 1. On March 12, 2018, Defendant Gary Carpino filed a Suggestion of Death Upon the Record Pursuant to Federal Rule of Civil Procedure 25(a)(1), which indicated that Plaintiff died on December 25, 2017. ECF No. 21. There has been no docket activity in this case since.

DISCUSSION

Under Rule 25(a)(1):

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. *If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.*

Fed. R. Civ. P. 25(a)(1) (emphasis added).

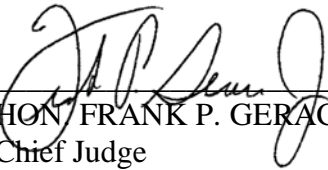
Here, Defendant filed a Suggestion of Death Upon the Record on March 12, 2018, and therefore the 90-day period to file a motion to substitute expired on June 12, 2018. No party has filed such a motion or otherwise indicated to the Court that it intends to do so, and therefore this case must be dismissed pursuant to Rule 25(a)(1).

CONCLUSION

Because the *pro se* Plaintiff is deceased and no individual has moved to substitute, this case is DISMISSED. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: August 15, 2018
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court